

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.
--

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN A. MAZURAK,

Defendant and Appellant.

B171063

(Los Angeles County
Super. Ct. No. BH 002126)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Michelle R. Rosenblatt, Judge. Affirmed.

Murray A. Rosenberg, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Jaime L. Fuster and April S. Rylaarsdam, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant appeals from the denial of his petition seeking to establish his factual innocence as to four arrests and to seal and destroy those arrest records. We reject his claim.

Defendant suffered arrests on March 27, 1977, November 29, 1985, December 2, 1985, February 8, 1988, and October 9, 1989. Defendant claimed in the current petition that he was incarcerated in Arizona and the arrests were being used to enhance his sentence. He said no charges were ever filed as to the arrests.

The trial court granted defendant's petition as to the October 9, 1989, arrest (for robbery). That matter is not at issue here.

As to the other arrests, the trial court issued an order inviting both sides to submit documentary evidence and "any other evidence submitted by the parties that the Court deems material, relevant and reliable." Defendant submitted various documents, including two declarations from himself. The court then denied the motion as to the four arrests.

Defendant's sole claim on appeal is that the trial court erred in failing to hold an evidentiary hearing with live testimony. The problem with defendant's position is that he never asked to put on live testimony. The trial court's order, quoted from above, made it plain that "material, relevant and reliable" live testimony would be considered. Indeed, the trial court's language mirrored the statutory language of Penal Code section 851.8, subdivision (b).

We recognize that *People v. Chagoyan* (2003) 107 Cal.App.4th 810, reversed a petition denial for failure to conduct an evidentiary hearing. The appellate court quoted the statutory language above and held that the trial court should have allowed the defendant to present his own proffered testimony and that of a security guard present at the time of the defendant's arrest. A fair reading of *Chagoyan* reveals that while, if a defendant has "material, relevant and reliable" live testimony to present, the trial court must hear it, nothing requires a trial court to elicit something that is not offered.

Neither in the trial court nor here has defendant given the slightest hint as to what live testimony he had to offer. We cannot fault the trial court for failing to consider something that was not presented.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

ORTEGA, J.

We concur:

SPENCER, P.J.

VOGEL, J.